THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 31049 OF 1997

Date: 28.01.2008

Between:

L. Gangulu.

… Petitioner.

And

Authority under Payment of Wages Act, 1936 & Asst. Commissioner of Labour, Karimnagar and two others.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 31049 OF 1997

ORDER:

This writ petition is filed seeking a writ of certiorari to set aside the order dated 27.09.1993, whereby the Payment of Wages Authority posted P.W. Case No. 22 of 1993 for hearing on 19.10.1993 after setting aside the *ex parte* order passed earlier. Petitioner herein, a part time employee, in the S.T. Boys hostel at Koratla was disengaged from service vide proceedings dated 20.01.1993. While the petitioner has questioned the order of termination by way of a writ petition filed before this Court, he invoked the jurisdiction of the Payment of Wages Authority claiming wages for the period prior thereto. Since the respondents did not appear, they were set *ex parte* on 06.08.1993. However, on an application being filed by the respondents herein, the *ex parte* order was set aside and, vide proceedings dated 27.09.1993, the matter was directed to be posted for hearing on 19.10.1993.

Sri K. Vasudeva Reddy, learned Counsel for the petitioner would contend that the Payment of Wages Authority does not have jurisdiction to set aside an *ex parte* order beyond one month from the date of the order whereby the respondents were set *ex parte*. He would contend that since the order, setting aside the *ex parte* order passed on 06.08.1993, is beyond the prescribed period of thirty days the order of the Payment of Wages Authority is without jurisdiction and

is liable to be quashed. Learned Counsel would place reliance on the Division Bench judgment of this Court in W.P. No. 3380 of 1994 dated 13.06.1997. He would point out another infirmity in the proceedings that the petitioner was not put on notice before the *ex parte* order was set aside though the proviso to Rule 8(3) mandates a notice being served on the opposite party regarding the date fixed for re-hearing.

Learned Government Pleader for Social Welfare, on the other hand, would submit that in several cases the Payment of Wages Authority had rejected similar claims, made on behalf of the workmen concerned, on merits. He would refer to a few of such orders passed by the Payment of Wages Authority, copies of which are enclosed along with the counter-affidavit.

The order impugned in this writ petition is the order whereby the Payment of Wages case was posted for hearing after the *ex parte* order was set aside. It is not for this Court to examine whether the claims of the workman ought to have been granted or rejected on merits, since this question has not been examined by the Payment of Wages Authority in the present case. The only question which necessitates examination is whether the Payment of Wages Authority has acted contrary to the proviso to Rule 8(3) of the Payment of Wages Rules.

Rule 8, which relates to appearance of parties, may be extracted in its entirety.

8. Appearance of parties:- (1) If the application is entertained, the Authority shall call upon the employer by a notice inform E to appear before him on specified date together with all relevant documents and witnesses, if any, and shall inform the applicant of the date so specified.

(2). If the employer or his representative fails to appear on the specified date, the Authority may proceed to hear and determine the application *ex parte*.

(3). If the applicant fails to appear on the specified date, the Authority may dismiss the application:

Provided that an order passed under sub-rule (2) or sub-rule (3) may be

set aside and the application re-heard on good cause being shown within one month of the date of the said order, notice being served on the opposite party of the date fixed for re-hearing.

While Rule 8(2) provides that if an employer, or his representative, fails to appear on the specified date, the Authority may proceed to hear and determine the application *ex parte,* in the present case the order, setting the respondent *ex parte*, is dated 06.08.1993 which was passed by the Payment of Wages Authority in exercise of the jurisdiction conferred under Rule 8(2). The proviso to Rule 8(3) mandates that an order passed under sub-rule (2), or sub-rule (3), may be set aside and the application re-heard on good cause being shown within one month of the date of the said order, notice being served on the opposite party of the date fixed for re-hearing. While the proviso can also be construed as a notice being required to be given for re-hearing, and not a notice being required to be given before an *ex parte* order is set aside, it is well settled law that in the absence of a prohibition, and where the statutory rules are silent in this regard, principles of natural justice must be read into the unoccupied interstices of a statutory provision and when so read, the minimum requirement is for a party to the proceedings being put on notice before an order is passed against him. The Payment of Wages Authority ought to have put the petitioner-workman on notice before the *ex parte* order was set aside and since, admittedly, the petitioner was not put on notice the impugned order dated 27.09.1993, fixing the date for re-hearing as 19.10.1993 on the *ex parte* order being set aside, is itself liable to be quashed.

On the question whether the Payment of Wages Authority had the power to set aside an *ex-parte* order, beyond thirty days of the *ex parte* order being passed neither Sri K. Vasudeva Reddy, learned Counsel

for the petitioner, nor the learned Government Pleader for Social Welfare is in a position to furnish information regarding the date on which the application to set aside the *ex parte* order was filed on behalf of the respondent. The date of filing of the application would be crucial and it is this date which would be relevant to decide whether an application to set aside an *ex parte* order could have been entertained or not. Since the impugned order dated 27.09.1993, whereby the case was posted for further hearing after the *ex parte* order was set aside, has itself been set aside, the matter stands remanded to the Payment of Wages Authority who shall, after hearing both parties, pass orders both on the question whether the *ex parte* order passed earlier could have been set aside and on merits. If the Payment of Wages Authority holds that it can be set aside, he shall then decide the application on merits.

The Division Bench judgment of this Court on which reliance is placed by Sri K. Vasudeva Reddy, learned Counsel for the petitioner, is of no assistance in as much as in the present case it is not clear as to whether an application to set aside the *ex parte* order was filed within thirty days of the *ex parte* order being passed or not. As this question forms the basis for exercise of jurisdiction, under the proviso to Rule 8(3), it is not for this Court to examine this question in certiorari proceedings under Article 226 of the Constitution of India. Similar would be the answer to the contention urged on behalf of the learned Government Pleader for Social Welfare. Since the Payment of Wages Authority has not examined the order on merits it is not for this Court to do so in the certiorari proceedings under Article 226 of the Constitution of India.

Learned Government Pleader for Social Welfare would point out

that even if the matter were to be remanded, the address of the petitioner is shown as the Scheduled Caste Hostel where he is no longer working and that the notice cannot be served upon him. Sri K. Vasudeva Reddy, learned Counsel for the petitioner, would submit that it would suffice if a notice were to be served on his office. Recording this contention of Sri K. Vasudeva Reddy, the impugned order dated 27.09.1993 is set aside and the matter is remanded to the Payment of Wages Authority who shall consider the matter afresh in accordance with law after hearing both parties. Since the claim of wages relates to a period prior to January, 1993 it is but appropriate that the matter be heard and decide expeditiously, in any event not later than three months from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs.

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Date: 28.01.2008 RAMESH RANGANATHAN, J

MRKR